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ABM Onsite Services—West, Inc. and International Association of Machinist and Aerospace Workers, District Lodge W24, Local Lodge 1005.
Case 19–CA–153164

August 26, 2015

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND MCFERRAN

DECISION AND ORDER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by International Association of Machinist and Aerospace Workers, District Lodge W24, Local Lodge 1005 (the Union) on May 28, 2015, the General Counsel issued the complaint on June 10, 2015, alleging that ABM Onsite Services—West, Inc. (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 19–RC–144377. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On July 1, 2015, the General Counsel filed a Motion for Summary Judgment. On July 6, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis of its contention, raised and rejected in the underlying representation proceeding, that it is not an employer within the meaning of the Act but rather is subject to the Railway Labor Act, and, therefore, the Board lacks jurisdiction.¹

¹ The Respondent also asserts that the unfair labor practice charge and the complaint are barred in whole or in part by Sec. 10(b) of the Act. However, the Respondent has not presented any factual or legal basis in support of this defense, and its answer admits the complaint allegations that the charge was filed on May 28, 2015, and that it has refused to bargain with the Union since May 27, 2015. Therefore, we find that the Respondent's 10(b) defense is without merit.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a State of Delaware corporation with an office and place of business at Portland International Airport in Portland, Oregon (the Airport), is engaged in operating the baggage handling system at the Airport and providing janitorial, parking, facilities engineering, security, and landscaping services at various locations.

In conducting its operation described above during the 12-month period preceding issuance of the complaint, a representative period, the Respondent derived gross revenues in excess of \$500,000, and performed services valued in excess of \$50,000 in states other than the State of Oregon.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on April 2, 2015, the Union was certified on April 10, 2015, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time jammer technicians and dispatchers employed by the Respondent at the Portland International Airport in Portland, Oregon; excluding office and clerical employees, administrative assistants, professional employees, managerial employees, guards and supervisors as defined in the Act.

² The Respondent's request to dismiss the complaint is denied.

Member Miscimarra would have granted review in the underlying representation proceeding. He agrees, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding and that summary judgment is appropriate, with the parties retaining their respective rights to litigate relevant issues on appeal.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

By letters dated April 13 and May 5, 2015, the Union requested that the Respondent bargain with it as the exclusive collective-bargaining representative of the unit employees and, since May 27, 2015, the Respondent has refused to do so.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since May 27, 2015, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, ABM Onsite Services—West, Inc., Portland, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the International Association of Machinists & Aerospace Workers, District Lodge W24, Local Lodge 1005 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time jammer technicians and dispatchers employed by the Respondent at the Portland International Airport in Portland, Oregon; excluding office and clerical employees, administrative assistants, professional employees, managerial employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Portland, Oregon, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 27, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C., August 26, 2015

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Association of Machinists and Aerospace Workers, District Lodge W24, Local Lodge 1005 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time jammer technicians and dispatchers employed by us at the Portland International Airport in Portland, Oregon; excluding office and clerical employees, administrative assistants, professional employees, managerial employees, guards and supervisors as defined in the Act.

ABM ONSITE SERVICES—WEST, INC.

The Board's decision can be found at www.nlrb.gov/case/19-CA-153164 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

